

Fair Pay and Safe Workplaces Executive Order (FPSW EO) Overview

Agenda

- Fair Pay and Safe Workplaces Executive Order Overview
- Department of Labor Guidance
- Federal Acquisition Regulation (FAR) Rule
- Paycheck Transparency and Mandatory Arbitration
- Key Dates for Phase-in Implementation
- Preassessment
- Additional Resources
- Q&A

Fair Pay and Safe Workplaces Executive Order

Published in the Federal Register August 25, 2016; Effective October 25, 2016

- Directs prospective contractors to disclose labor law violations and gives agencies guidance on how to consider labor violations when awarding federal contracts
- Requires that contractors' employees are given the necessary information each pay period to make sure that they are getting paid what they are owed
- Ensures that workers who are victims of sexual assault or sexual harassment get their day in court and are not forced to arbitrate the claims if they work for companies with large federal contracts



14 Applicable Federal Labor Laws

DOL Wage and Hour Division

- The Fair Labor Standards Act, 29 U.S.C. chapter 8
- The Migrant and Seasonal Agricultural Worker Protection Act
- 40 U.S.C. chapter 31, subchapter IV, formerly known as the Davis-Bacon Act
- 41 U.S.C. chapter 67, formerly known as the Service Contract Act
- The Family and Medical Leave Act
- E.O. 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors)

DOL Occupational Safety and Health Administration (OSHA)

- The Occupational Safety and Health Act of 1970
- OSHA-approved State Plans

DOL Office of Federal Contract

Compliance Programs

- Section 503 of the Rehabilitation Act of 1973
- The Vietnam Era Veterans' Readjustment Assistance Act of 1972 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974
- E.O. 11246 of September 24, 1965 (Equal Employment Opportunity)

National Labor Relations Board

- The National Labor Relations Act

Equal Employment Opportunity Commission

- Title VII of the Civil Rights Act of 1964
- The Americans with Disabilities Act of 1990
- The Age Discrimination in Employment Act of 1967
- Section 6(d) of the Fair Labor Standards Act (Equal Pay Act)

Department of Labor (DOL) Guidance

- Defines the terms in the Executive Order: administrative merits determinations, civil judgments, and arbitral awards or decisions that must be disclosed; and whether violations are classified as “serious,” “repeated,” “willful,” and/or “pervasive” (SRWP) under the 14 federal labor laws
- Describes the role of Agency Labor Compliance Advisors (ALCAs) who will assist contracting officers with reviewing and making determinations about disclosed labor violations, as well as helping contractors take steps to come into compliance
- Explains how ALCAs will make an assessment to the contracting officer regarding a contractor’s record of labor law compliance; ALCAs classify violations, weigh those violations with mitigating factors presented by the contractor, and make recommendations to the contracting officer as to whether the contractor has satisfactory integrity and business ethics
- Appendices show examples of SRWP violations for each applicable labor law

The Federal Acquisition Regulation (FAR) Rule

As directed by the Executive Order, the FAR regulations build on DOL's Guidance and existing federal procurement policies and practices. In accordance with the FAR Rule:

- Prospective contractors interested in submitting for a specific federal acquisition will be required to disclose in GSA's System for Award Management whether there "have been" or "have not been" violations of the 14 federal labor laws rendered against them
- If a contractor indicates that it had labor violations during the reporting period and the contracting officer initiates a responsibility determination, the contractor will be asked to provide more information about the violation and will be given the opportunity to provide any mitigating factors and remedial measures taken to address the violations
- Subcontractors will disclose details regarding their labor violations, mitigating factors, and remedial actions directly to DOL

Paycheck Transparency and Mandatory Arbitration

Paycheck Transparency:

- Covered contractors and subcontractors are required to give their workers wage statements (i.e., information concerning hours worked, overtime hours, gross pay and rate of pay, and any additions to or deductions made from their pay)
- Workers who are treated as independent contractors are required to receive a notice informing them of their independent contractor status
- Contractors and subcontractors must also provide written notice to inform workers if they are exempt from overtime pay

Mandatory Arbitration:

- Companies with federal contracts of \$1 million or more are prohibited from requiring their workers to enter into pre-dispute arbitration agreements for disputes arising out of Title VII of the Civil Rights Act, or from torts related to sexual assault or harassment

Key Dates for Phase-in Implementation

October 25, 2016

January 1, 2017

April 25, 2017

October 25, 2017



The FAR Rule takes effect and disclosure requirements and assessment begin for contracts greater than or equal to \$50 million.

The reporting period is initially shortened to one year (October 25, 2015)

Paycheck Transparency clause takes effect

Disclosure requirement and assessment threshold is reduced to \$500,000

Mandatory disclosure to DOL and assessment begins for all subcontractors and subcontracts greater than or equal to \$500,000

Preassessment

- Independent of a specific acquisition, any current or prospective government contractor may voluntarily contact DOL to request an assessment of their record of labor law compliance
- Using DOL Guidance, the Department will assess whether the contractor has a satisfactory record of labor law compliance
- If a contractor that has been assessed by DOL subsequently submits a bid, and the contracting officer initiates a responsibility determination of the contractor, the contracting officer and the ALCA may use DOL's assessment that the contractor has a satisfactory record of labor law compliance unless additional labor law violations have been disclosed
- Preassessment began on September 12, 2016 and is ongoing

Additional Resources

- For more information, please see the [Fair Pay and Safe Workplaces page](#) on DOL's website
- [Preassessment](#)
- [FAQs](#)
- [DOL Guidance](#)
- [FAR Rule](#)